No. 91-633

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

PRINCIPAL FINANCIAL GROUP, a/k/a or d/b/a
PRINCIPAL MUTUAL LIFE INSURANCE COMPANY,
Petitioner,
v.

BARBARA CAROLINE THOMAS,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Alabama

---

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE AND BRIEF FOR THE AMERICAN COUNCIL OF LIFE INSURANCE AND HEALTH INSURANCE ASSOCIATION OF AMERICA AS AMICI CURIAE IN SUPPORT OF THE PETITION

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The American Council of Life Insurance ("ACLI") and the Health Insurance Association of America ("HIAA") hereby move, pursuant to Rule 37.2 of the Rules of this Court, for leave to file the attached brief as *amici curiae*. Counsel for the petitioner has consented to the filing of this brief; counsel for the respondent has refused consent.

The ACLI is the largest non-profit life insurance trade association in the United States, representing the inter-

ests of 616 member life insurance companies, 435 of which hold licenses to conduct insurance business in Alabama. The ACLI's members currently hold 95 percent of the life insurance in force in legal reserve life insurance companies in the United States and 92.6 percent of such insurance in Alabama. The HIAA represents the interests of 300 member companies that write over 85 percent of the health insurance written by commercial insurance companies in the United States; the majority of those members hold licenses in Alabama.

The central issue in this case—the constraints that the Due Process Clause of the Fourteenth Amendment places upon the size of punitive damages awards—is vitally important to the members of the ACLI and the HIAA. Despite this Court's decision in *Pacific Mut. Life Ins. Co. v. Haslip*, 111 S.Ct. 1032 (1991), lower courts have continued to approve punitive damages awards that are excessive and bear no rational relationship to either the plaintiff's injuries or the defendant's intent to harm. Such decisions, like the decision below, drastically and unpredictably enlarge the risks facing insurers, which must rely on a predictable allocation of risks and costs in providing insurance, and jeopardize their ability to offer affordable insurance policies.

Because of their nationwide constituencies, the ACLI and the HIAA are uniquely able to provide this Court with the views of the life and health insurance industries concerning the issue presented in this case and to offer additional arguments underscoring the importance of this Court's review. In other cases involving the constitutionality of punitive damages law, the ACLI and the HIAA have filed *amici* briefs in this Court. *See, e.g., Haslip, supra*; *Browning-Ferris Industries v. Kelco Disposal, Inc.*, 492 U.S. 257 (1989); *Bankers Life & Casualty Co. v. Crenshaw*, 486 U.S. 71 (1988); *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813 (1986). For these reasons, the

Court should grant this motion for leave to file the attached brief *amici curiae* in support of the Petition.

Respectfully submitted,

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November 1991

QUESTION PRESENTED

Whether a punitive damages award of $750,000 that is 750 times the compensatory damages award and that arises from a reasonably-based denial of a $1,000 insurance claim violates the Due Process Clause of the Fourteenth Amendment, as interpreted by this Court in *Pacific Mutual Life Ins. Co. v. Haslip*, 111 S. Ct. 1032 (1991).

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INTERESTS OF THE AMICI

As stated in the motion accompanying this *amici* brief, the American Council of Life Insurance ("ACLI") is the largest non-profit life insurance trade association in the United States, representing the interests of 616 member life insurance companies. The ACLI's members currently hold 95 percent of the life insurance in force in legal reserve life insurance companies in the United States. The Health Insurance Association of America ("HIAA") represents the interests of 300 member companies that write over 85 percent of the health insurance written by commercial insurance companies in the United States.

Clarification of the constraints that the Due Process Clause of the Fourteenth Amendment places upon the size of punitive damages awards is critically important to the members of the ACLI and the HIAA. Excessive and unreasonable punitive damages awards drastically and unpredictably enlarge the risks facing insurers and inevitably lead to increases in premium charges that jeopardize their ability to offer affordable insurance policies. The ACLI and the HIAA thus file this brief to provide the Court with their unique perspectives, based on the experiences of their broad-based constituencies, concerning the constitutionality of punitive damages law as it has recently expanded, and to offer additional arguments that underscore the importance of this Court's review.

STATEMENT

1. Petitioner Principal Financial Group, a/k/a or d/b/a Principal Mutual Life Insurance Company ("Principal"), issued a policy of group life insurance to the University of South Alabama Medical Center ("the University"). Pet. App. 29a. The policy, which provided coverage for the University's employees and their dependent children, defined "dependent," in pertinent part, as follows:

> . . . each unmarried child who is nineteen years but less than twenty-five years of age provided he is attending school on a full-time basis and is dependent upon the Person [employee] for his principal support and maintenance.

Id. at 29a-30a.

Respondent Barbara Caroline Thomas ("Thomas") was employed by the University. Pet. App. 30a. In July of 1984, Thomas' 21-year old daughter, Melinda Warren ("Warren"), enrolled in a 1200-hour work-study course in cosmetology at the Mobile Academy of Hair Design. *Id.* However, Warren became disabled as a result of ovarian cancer and was unable to attend classes after

August of 1985. *Id.* She died a year and half later, in March, 1987, at the age of 24. *Id.*

Thomas then filed a claim with Principal for the $1,000 benefit that was payable for the death of a "dependent." Pet. App. 30a. A claims examiner for Principal investigated the claim and learned, in the course of her investigation, that Warren had not attended school for the 18 months preceding her death. *Id.* Consequently, the claims examiner concluded that, because Warren had not been "attending school on a full-time basis" at the time of her death, Warren was not a "dependent" within the meaning of the University's group policy, and that the claim should be denied. *Id.* at 31a. The claims examiner's recommendations were then reviewed by her supervisor and by the supervisor's supervisor, both of whom agreed that Warren was not a "dependent" within the meaning of the policy and that the claim should be denied. *Id.* Accordingly, Principal denied the claim. *Id.* at 31a-32a.

Upon receiving notice that the claim had been denied, Thomas and her attorney wrote to the claims examiner for Principal, asking that Principal reconsider its denial. Pet. App. 32a. Principal did so. The claims examiner conducted a second review of the claim, and her findings were then reviewed by her supervisor, a second claims examiner, and the senior claims consultant. *Id.* All of them agreed that the policy afforded no coverage for the claim and that Principal's initial decision to deny the claim had been correct. *Id.* Accordingly, in a letter to Thomas' attorney, Principal reiterated its denial. *Id.*

The University—which provided the group life insurance program and had selected the language of the policy —reviewed Principal's denial of Thomas' claim to decide whether "to accept the decision . . . or challenge it." CR 683 (cited in Petition for Certiorari at 5). Ted Ferguson, Personnel Director of the University, stated that he was "not aware of any employee or dependent who has been continued on health insurance beyond their eligibility be-

cause they became ill when they were eligible." *Id.* at 687. Consequently, he concluded that "Ms. Warren was clearly not an eligible dependent when she died and I cannot support an appeal of the death claim." *Id.* The University then notified Thomas that it had "reviewed the claim and understands [Principal's] contractual basis for denying the claim." *Id.* at 688.

2. Thomas then filed suit against Principal in the Circuit Court of Mobile County, Alabama ("the trial court"), seeking compensatory damages for Principal's alleged breach of the insurance contract and punitive damages for Principal's alleged "bad faith" in refusing to pay her claim. *Id.* at 28a. After the trial court denied Thomas' motion for a directed verdict on the contract claim and Principal's motion for a directed verdict on both the contract and bad-faith claims, the case was submitted to a jury, which awarded Thomas $1,000 in compensatory damages on the breach of contract claim, and $750,000 in punitive damages on the bad-faith claim. *Id.* at 29a. Following the verdict, Principal moved for judgment notwithstanding the verdict on both claims. The court granted that motion with respect to the bad-faith claim and vacated the punitive damages award. *Id.*

3. On appeal by both parties, the Alabama Supreme Court affirmed the judgment for Thomas on her breach of contract claim, and reversed the judgment for Principal on Thomas' bad-faith claim. Pet. App. 29a. It held that there was a genuine issue for the jury as to whether Principal's interpretation of the policy language was correct. *Id.* at 33a. It also acknowledged that an insurer is not liable for "bad faith" under Alabama law if it had an "arguable" or "fairly debatable" reason for its denial of a claim. *Id.* at 40a-42a. Nonetheless, it concluded that the jury could "reasonably" have found Principal guilty of "bad faith" for denying Thomas' claim. *Id.* at 58a-60a. Accordingly, it reinstated the jury's findings that Principal was liable for punitive damages on the bad-faith

claim and remanded the case to the trial court for a determination as to whether the amount of the award was excessive. *Id.* at 60a-61a.

4. On remand, the trial court held that the $750,000 punitive damages award was not excessive. Pet. App. 27a. In arriving at that conclusion, it purported to apply the standards for post-verdict review of punitive damages awards that were set forth in *Green Oil Co. v. Hornsby*, 539 So. 2d 218 (Ala. 1989), and later approved by this Court in *Pacific Mut. Life Ins. Co. v. Haslip*, 111 S.Ct. 1032 (1991). *Id.* at 16a, 19a-26a. The first of those standards is the requirement that "punitive damages should bear a reasonable relationship to the harm that is likely to occur from the defendant's conduct as well as to the harm that actually has occurred." 539 So. 2d at 223; 111 S.Ct. at 1045.[1] The trial court found that this requirement had been met even though the punitive damages were 750 times the amount of compensatory damages. Pet. App. 25a-26a. It reasoned that "[a]lthough the evidence at trial established that the actual monetary loss suffered by Mrs. Thomas was $1000.00, the harm caused by defendant's misconduct cannot be measured simply by reference to the amount of insurance involved." *Id.* at 25a. And the apparent basis for that conclusion was that Mrs. Thomas had suffered "the untimely loss of a child"; that the period following her daughter's death was "a time of crisis" for Thomas and her " 'weakest and most perilous time of need' "; that Thomas needed the $1000 "to help pay for Melinda's funeral expenses"; and that Principal had "forc[ed] . . . Mrs. Thomas into an

[1] In conjunction with the other standards approved by this Court, this requirement was designed, as this Court said, to ensure "that the punitive damages are reasonable in their amount and rational in light of their purpose to punish what has occurred and to deter its repetition." 111 S.Ct. at 1045.

unnecessary, prolonged court battle over a $1,000.00 claim . . . ." *Id.*[2]

5. On appeal, the Alabama Supreme Court agreed with the trial court that the punitive damages award was not excessive. Pet. App. 2a. It acknowledged that, under *Haslip* and *Green Oil*, "the amount of punitive damages should bear a reasonable relationship to the harm that is likely to occur from the defendant's conduct as well as to the harm that actually has occurred." *Id.* But it went on to hold that, although "the amount of life insurance was only $1,000," the "actual harm" suffered by Thomas was "grievous"—apparently because Thomas needed the money for her child's burial expenses. *Id.* The Alabama Supreme Court also held that the "likely harm" from Principal's conduct was "grievous" because the size of the claim might discourage litigation, encourage unfair claims review, and "result in a loss of faith in the judicial system." Pet. App. 3a.

Three of the eight justices in the majority also expressly noted their belief that, under *Haslip*, there need not be any "proportionality between compensatory damages and punitive damages." Pet. App. 8a (Houston, J., concurring specially).

[2] The trial court also found (1) that "the jury was not influenced by bias, passion, prejudice, corruption, or other improper motive or cause" and (2) that the jury's verdict was not "out of line with jury verdicts returned and affirmed in similar cases." Pet. App. 18a-19a, 27a.

REASONS FOR GRANTING THE WRIT

DESPITE THIS COURT'S DECISION IN *HASLIP*, LOWER COURTS HAVE CONTINUED TO APPROVE PUNITIVE DAMAGES AWARDS THAT DO NOT HAVE ANY RATIONAL RELATIONSHIP TO COMPENSATORY DAMAGES AND THEREFORE VIOLATE THE DUE PROCESS CLAUSE

In *Pacific Mut. Life Ins. Co. v. Haslip*, 111 S.Ct. 1032 (1991), this Court held that the Due Process Clause of the Fourteenth Amendment imposes certain constraints on both the procedures by which punitive damages awards are determined and upon the *size* of such awards. Specifically, it held that punitive damages awards must "have some understandable relationship to compensatory damages." 111 S.Ct. at 1045. Unfortunately, lower courts have failed to heed that requirement and have continued, even after *Haslip*, to approve punitive damages awards that have no rational or "understandable" relationship to the amount of compensatory damages awarded. As a result, the problem of "punitive damages that 'run wild' " (111 S.Ct. at 1043), which this Court attempted to resolve in *Haslip*, continues to be a problem and will have serious adverse effects, among other things, upon the affordability and availability of insurance. It therefore becomes necessary for this Court to reinforce the message it affirmed in *Haslip* that the Due Process Clause imposes constraints on the size of punitive damages awards, and to clarify those constraints.

The present case—in which an insurer has been ordered to pay $750,000 in punitive damages after carefully considering and rationally denying a $1,000 insurance claim—frames the relevant issues with exceptional clarity and offers this Court an excellent opportunity to delineate the constraints that the Due Process Clause places upon the amount of such awards. The punitive damages award in this case was clearly much "greater than reasonably necessary to punish . . ." Principal for its con-

duct or to "deter" such conduct in the future. 111 S.Ct. at 1046. This case, unlike *Haslip*, involves no fraudulent conduct or corruption by an employee. It was indeed a rather straightforward difference of opinion between the parties as to the construction of the words of a contract. This was a question of law—the sort of issue that the courts are frequently called on to decide and that they are well qualified to resolve. The question was one that had not previously been decided by the Alabama courts, leaving much room to support the conclusion of Principal's claims examiners, who handled the matter carefully, thoroughly, and responsibly.[3] There is no trace of any evidence here that Principal or its agents were careless, indifferent or overreaching. To say that their action was oppressive simply means that, in *any* situation where there is a claim that is honestly debatable, the insurer is subject to the Hobson's choice of either (1) paying the claim automatically (thus giving up its right to a court decision on a bona fide issue), or (2) being subjected to liability for massive punitive damages that lack any "understandable relationship" to the compensatory damages awarded.

A. Both The Alabama Supreme Court And Other Lower Courts Have Ignored *Haslip*'s Requirement That Punitive Damages "Have Some Understandable Relationship To Compensatory Damages"

Despite this Court's holding in *Haslip* that punitive damages must have some rational and understandable relationship to compensatory damages, a number of lower courts—within and outside Alabama—have interpreted *Haslip* to permit punitive damages awards that do *not* have any rational relationship to compensatory damages. As those courts interpret *Haslip*, the Due Process Clause is satisfied as long as courts (or even juries) purport to

[3] *See* Pet. App. 12a (Maddox, J. dissenting) (noting that Principal's "obligation to pay was not established until this [Alabama Supreme] Court heard the case on appeal . . .").

have considered the various standards for post-verdict review that were set out in *Haslip*.

In the present case, at least three members of the Alabama Supreme Court did "not know" whether *Haslip* requires "some kind of proportionality between compensatory damages and punitive damages" (Pet. App. 3a)—even though this Court emphasized in *Haslip* that the Due Process Clause requires punitive damages awards to bear "some understandable relationship" to compensatory damages. *Haslip*, 111 S.Ct. at 1045. They resolved this supposed "uncertainty" against any concept of proportionality; they interpreted *Haslip* not to require any such proportionality "if the jury is charged as it was in *Haslip* and if the trial court conducts a hearing in accordance with *Hammond v. City of Gadsden* . . . and evaluates the case by the seven factors listed in *Green Oil Co. v. Hornsby* . . . and if this [Alabama Supreme] Court conducts an appropriate review." Pet. App. 8a (citations omitted).

Lower courts in other jurisdictions have come to the same conclusion. For example, in *Hosp. Auth. of Gwinnett County v. Jones*, 1991 Ga. LEXIS 815 (Ga. 1991)—a case that this Court had remanded for reconsideration in light of *Haslip* (111 S. Ct. 1298)—the Georgia Supreme Court rejected "the notion that punitive damages must necessarily bear some relationship to the actual damages awarded by the jury." 1991 Ga. LEXIS 815 at *3. The Georgia Supreme Court held that, "[w]hile the Supreme Court in *Haslip* analyzed the punitive damages award by comparing it to the actual award, nothing in the opinion mandates such a comparison." *Id.* at *4.[4] Similarly, in *Coyne v. Allstate Ins. Co.*, 1991 U.S. Dist. LEXIS 11207 (E.D. Pa. 1991), the United States District Court for the Eastern District of Pennsylvania concluded that Pennsylvania law on punitive damages

[4] A petition for rehearing was filed, but was denied by the Georgia Supreme Court on November 1, 1991.

complies with the Due Process Clause, even though Pennsylvania expressly provides that punitive damages need not be reasonably related to compensatory damages. 1991 U.S. Dist. LEXIS 11207 at *21 n.16 (citing *Kirkbride v. Lisbon Contractors, Inc.*, 521 Pa. 97, 555 A.2d 800, 803 (1989)). And, in *Oberg v. Honda Motor Co.*, 108 Or. App. 43, 814 P.2d 517, 524 (1991), the Oregon Court of Appeals found that Oregon law on punitive damages complies with the Due Process Clause, even though the Oregon Constitution prohibits trial or appellate courts from setting aside jury verdicts on the ground that they are excessive and even though Oregon law imposes no requirement of proportionality.[5]

In the aftermath of *Haslip*, therefore, the lower courts have seemingly disregarded this Court's message. Of course, one factor for a reviewing court's consideration, under *Haslip*, is "whether there is a reasonable relationship between the punitive damages award and the harm likely to result from the defendant's conduct as well as the harm that actually has occurred . . . ." 111 S.Ct. at 1045. But, as the present case illustrates, some courts are interpreting that standard in such a way as to eliminate completely any requirement that punitive damages bear an "understandable" relationship to compensatory damages. The result has been to eliminate any meaningful constraint on the amount of punitive damages awarded.

This case amply illustrates the point: both the trial court and the Alabama Supreme Court simply ignored the jury's evaluation (as reflected in the $1,000 compensatory damage award) of the "harm" caused by Principal's con-

[5] The Oregon court found that the factors considered by the jury, under Oregon law, in determining the amount of punitive damages, were "similar to those considered by Alabama courts in their post-trial review and approved by" this Court in *Haslip*. 814 P.2d at 524. However, as the defendants in *Oberg* pointed out, those factors "contain[ed] no requirement that the [punitive damages] award be proportional to plaintiff's injury. . . ." 814 P.2d at 522 & n.10.

duct and, instead, chose to rely upon their own speculative and unfounded evaluation of that harm. *First*, while the trial court acknowledged that on the basis of "the evidence at trial . . . the actual monetary loss suffered by Mrs. Thomas was $1000.00 . . ." (Pet. App. 25a), it then went on to hold that "the harm caused by defendant's misconduct cannot be measured simply by reference to the amount of insurance involved." *Id.* Apparently, the trial court chose also to consider (1) its perception of the emotional anguish that Mrs. Thomas had suffered as a result of the claim denial, and (2) its own moral outrage at Principal's conduct. Pet. App. 25a. But it was inappropriate for the trial court to consider either of those factors in evaluating the "harm" caused by the claim denial. The jury had not awarded Thomas *any* compensation for mental distress, even though Alabama law permits an insured to recover compensatory damages for mental distress in a bad faith action.[6] And the trial court's indignation, while perhaps relevant to determining the "reprehensibility" of Principal's conduct (another factor to be considered under *Haslip*), was clearly irrelevant to determining the "harm" caused by Principal's conduct.[7] The result was a punitive damages award that was not rationally related to—and was, in fact, 750 times—the compensatory damages award.

Second, the Alabama Supreme Court similarly ignored the amount of the compensatory damages in assessing the "harm" that had resulted from Principal's conduct. Like the trial court, it appeared to arrive at that conclusion

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[6] *Chavers v. Nat'l Sec. Fire & Cas. Co.*, 405 So.2d 1, 7 (Ala. 1981); *United Am. Ins. Co. v. Brumley*, 542 So.2d 1231, 1237 (Ala. 1989).

[7] Under *Haslip*, courts reviewing a punitive damages award are to look, among other things, at "(a) whether there is a reasonable relationship between the punitive damages award and the harm likely to result from the defendant's conduct as well as the harm that actually has occurred" *and* "(b) the degree of reprehensibility of the defendant's conduct . . . ." 111 S.Ct. at 1045.

based on its own suppositions as to the mental distress suffered by Thomas and its own obvious indignation that an insurer would deny a claim under such circumstances.[8] It also held that, although "the amount of life insurance was only $1,000," the "harm that [wa]s likely to occur from the defendant's conduct . . ." was much greater because (1) the out-of-pocket expenses incurred by Thomas' attorneys ($9,330.33) were greater than the policy amount at issue ($1,000.00); (2) without punitive damages, insureds in Thomas' position might therefore be unable to litigate such small insurance claims; (3) if insureds could not litigate small insurance claims, that might "free insurance adjusters from fairly investigating and reviewing" those claims; and (4) that, in turn, might "result in a loss of faith in the judicial system." Pet. App. 3a. However, that is at best an argument for allowing Thomas to recover enough in punitive damages to cover her attorney's fees (which were nowhere near $750,000).[9] And it overlooks the fact that Alabama law permits plaintiffs to recover their attorney's fees whenever a defendant lacks "substantial justification" for its position. Ala. Code §§ 12-19-272, 12-19-273 (Supp. 1990).

In short, although both the trial court and the Alabama Supreme Court purported to consider the factors approved by this Court, and to ensure that the punitive damages award was reasonably related to the harm caused by Principal's conduct, they defined "harm" in such a way

[8] While noting that "the amount of life insurance was only $1,000," the Alabama Supreme Court nonetheless held that the "actual harm" was "grievous" because "parents should not have to bury their children," because "[a]gainst that day, that evil day, that a mother hopes will never come, she pays her mite to an insurance company," and because in this case, Principal did "not pay the amount of money that the mite was supposed to secure." Pet. App. 2a-3a.

[9] As the Alabama Supreme Court delicately observed, "all of the costs of litigation would be more than adequately covered by the punitive damages awarded in this case." Pet. App. 4a.

as to evade the requirement that punitive damages "have some understandable relationship to compensatory damages." Thus, as petitioners have observed, it is possible for lower courts to pay "lip service" to *Haslip* while ignoring the limits that *Haslip* attempted to place on the size of punitive damages awards. Petition for Certiorari 13. As a result, even after *Haslip*, courts have continued to approve punitive damages awards that are unreasonably disproportionate to the compensatory damages awarded. *See, e.g., The Narrows v. Gotham Ins. Co.*, No. 3AN89-9272-Civil, slip op. (Alaska Super. Ct. 1991) (appeal docketed Nos. S-4388 & 4723) (trial court upheld $60 million punitive damages award for delay in reviewing claim under $280,000 insurance policy); *John A. Henry & Co., Ltd. v. T.G. & Y. Stores Co.*, 941 F.2d 1068 (10th Cir. 1991) ($100,000 in compensatory damages and $2 million in punitive damages); *Trans Ins. Co. v. Moriel*, 814 S.W.2d 144 (Tex. App. 1991) ($101,000 in compensatory damages and $1 million in punitive damages); *Fuller v. Preferred Risk Life Ins. Co.*, 577 So.2d 878 (Ala. 1991) ($16,765 in compensatory damages and $1 million in punitive damages).

This Court expressed the hope, in *Haslip*, that consideration of the standards approved in that case would "ensure[] that punitive damages awards are not grossly out of proportion to the severity of the offense and have some understandable relationship to compensatory damages." 111 S.Ct. at 1045. Unfortunately, that has not proven to be the case. In order to sustain the essence of the decision in *Haslip*, it thus becomes necessary for this Court to make its conclusion more specific. It can now further clarify the law in this area by making it clear that it meant what it said in *Haslip* and by providing further guidance and clarification as to the limits that the Due Process Clause imposes upon the size of punitive damages awards.

B. Unreasonable And Excessive Punitive Damages Awards Have Serious Adverse Effects Upon The Cost And Availability Of Insurance

When courts approve punitive damages awards that have no "understandable" relationship to compensatory damages, it becomes more difficult for insurance companies to predict the amount of their possible exposure. As a simple matter of economics, they must take this into account in fixing the amount of the premiums they charge. The result is to reduce the affordability—and even the availability—of insurance.

As a recent study prepared for the American Law Institute points out, anything that increases "uncertainty about the scope of an insurer's exposure produces greater 'variance' in the range of expected losses resulting from the risk of providing insurance coverage, and thereby increases the cost of bearing that risk." 1 *American Law Institute Reporter's Study: Enterprise Responsibility for Personal Injury* 86-87 (1991) ("ALI Study"). In particular, even

> [a] few large verdicts can heavily skew an insurer's underwriting experience, for the stability of rates depends on the law of large numbers. Standard risk-bearing techniques require that the increased "variance" in the distribution of expected loss resulting from the threat of a few large verdicts be offset either by higher premiums or by offering insureds less coverage for the same premium. *In fields in which insurers doubt their capacity to make reliable predictions at all, their decreased willingness to offer coverage at any price is not surprising.*

Id. at 90-91 (emphasis added). *See also* Clarke, Warren-Boulton, Smith & Simon, *Sources of the Crisis in Liability Insurance: An Economic Analysis*, 5 Yale J. Reg. 367, 392 (1988) (noting that greater uncertainty as to the size of potential awards forces insurers to raise premiums and even to stop providing insurance); Berger, *The Impact of Tort Law Development on Insurance*, 37 Am.

U. L. Rev. 285, 300 (1988) (observing that the "viability of insurance" is in large part predicated upon "a high degree of predictability as to the magnitude of risk," and that when such predictability is reduced, the insurer must either increase its premiums to cover the possible exposure or simply stop offering such coverage).

The operation of these principles was clearly demonstrated in the liability insurance crisis of the early 1980's. As the study for the American Law Institute concluded, "a significant share of the responsibility" for the drastic reduction in the "affordability and availability of commercial and professional liability insurance" was attributable to "developments within the civil liability system," including an "increase in the number of very large jury awards . . . ." ALI Study at 55, 64-66, 102. Similarly, the Tort Policy Working Group, a federal panel created by the Department of Justice to study the causes of the liability crisis, noted that an increase in the number of "million-dollar verdicts" had played a significant role in reducing the availability and affordability of liability insurance. U.S. Department of Justice, Tort Policy Working Group, *An Update On The Liability Crisis* 32, 36-38 (1987). *See also* Clarke, *et al.*, 5 Yale J. Reg. at 394-395 (concluding that increases in the amount and variability of tort awards had probably played a significant role in causing the liability insurance crisis). In that regard, it is notable that, according to Jury Verdict Research, the number of million-dollar awards is rising again; after peaking in 1985 at 590, and dropping to 410 in 1986, the number of such awards had risen to 588 by 1989 (the last year for which complete data are available). Insurance Information Institute, *The Liability System* (November, 1991).

The prospect that substantial punitive damages awards will accompany reasonably-based denials of benefit claims not only affects insurers' willingness to offer insurance, but has potentially perverse effects on insurers' claims-handling practices. In this case, Principal could hardly

have done more to ensure that its decision was well-grounded in fact and in the policy. The claim was carefully reviewed by no less than five employees of Principal, including the senior claims consultant. The coverage question turned on a legal issue that had not previously been decided by any Alabama court. And even Thomas' employer (to whom the policy had been issued) agreed with Principal that there was no coverage for Warren's death. Yet, despite Principal's review process, the courts below sustained a substantial punitive damages award against Principal. That punishment can only serve as an incentive for insurers, like Principal, to pay claims that warrant denial on their merits merely to obviate the prospect of a grossly excessive punitive damages award.[10] The inevitable results of routine payments of unfounded claims are, of course, increased premiums and less affordable insurance.

Consequently, if courts continue to approve punitive damages awards that have no "understandable relationship to compensatory damages" (111 S. Ct. at 1045), it is inevitable that such awards will have a detrimental effect upon the affordability and even the availability of insurance. Despite this Court's decision in *Haslip*, lower courts have continued to ignore the views expressed by this Court, and to approve such awards seemingly routinely. It is therefore important, for persons throughout this nation who rely upon the availability of affordable insurance, that this Court now revisit the constraints that

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[10] And, in difficult economic times, one can reasonably anticipate an increase in the number of unfounded claims. For example, health insurers responding to an HIAA survey reported that their cases of fraudulent claims increased from 12,500 in 1987 to 19,600 in 1989. *Findings: An HIAA Survey of Health Insurers' Anti-Fraud Programs* (July 24, 1990), at 2. The cost of such claims to the industry is astounding. Health insurance fraud constitutes a 10% surcharge of $55 billion to this nation's $550 billion annual health care bill. *See* HIAA, Occasional Paper, *Preventing and Controlling Health Insurance Fraud* (January, 1991), at 1.

the Due Process Clause imposes upon punitive damages awards.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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